

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
DEL VAL INK AND COLOR, INC.,) Docket No. II RCRA-91-0104
)
Respondent)

ORDER

The complaint in this matter was issued on June 24, 1991, pursuant to Section 3008 of the amended Solid Waste Disposal Act ("RCRA"), section 3008, 42 U.S.C. 6928. It charges Respondent with violations of RCRA and the pertinent Federal and State regulations by shipping restricted wastes to an off-site treatment facility without notifying the facility of appropriate treatment standards, and by failing to properly classify hazardous wastes on its shipping manifests.

An initial prehearing exchange was made by the parties in November 1991. Complainant filed an amendment to its prehearing exchange in February 1992, and, in response, Respondent filed an amendment to its prehearing exchange in May 1992. Following these prehearing exchanges, Complainant sought an order compelling Respondent to answer certain interrogatories, claiming it needed further information to clarify matters asserted in Respondent's prehearing exchange. This order was denied on October 28, 1992, by the Chief Administrative Law Judge, who was then presiding over the case. He found that such discovery would unreasonably delay the hearing and that Complainant had not shown that the information

sought has significant probative value with respect to the specific violations alleged in the complaint. He also set the matter for hearing on January 26, 1993.

Complainant, next, in December 1992, moved to postpone the hearing to a date unspecified. The grounds were that Complainant still needed more time to investigate Respondent's defense, as documented in its prehearing exchange, that all shipments alleged to have violated the law had been made under manifests in which the hazardous waste was properly classified and with land-ban notifications where appropriate. To this end, Complainant was requesting information from Respondent's hazardous waste consultant, S & W Waste. The Chief Administrative Law Judge, over Respondent's objection, by order dated January 12, 1993, allowed Complainant to proceed with its investigation but did not grant the indefinite postponement that Complainant seemed to be requesting, and he set the matter for hearing on March 10, 1993.

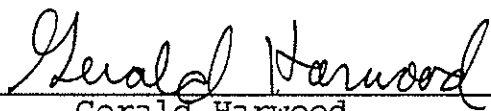
The case was then reassigned to me, and during a telephone conference with the parties on March 2, 1993, I again denied Complainant's request for a postponement of the hearing. Complainant's request this time was made on the grounds that although Complainant had received the requested information from S & W Waste, Complainant still wanted certain additional information from Respondent as set forth in Complainant's letter to Respondent of February 26, 1993.

Complainant has now moved for an order pursuant to 40 C.F.R. section 22.13(e), granting Complainant leave to withdraw the

prejudice would automatically follow, Complainant was in error. The motion must be considered on its merits, and under the rules of practice, 40 C.F.R. 22.13(e), it is within the discretion of the Presiding Officer to determine whether it should be granted. Here, the grounds for dismissal without prejudice have not been shown. Instead, it does appear that the allegations of the complaint are without merit and the complaint should be dismissed with prejudice. A dismissal of the complaint without prejudice would simply leave the matter unresolved and it would be manifestly unfair to Respondent to put Respondent in this position after it has expended the time and expense to rebut the charges in the complaint.

Nevertheless, because Complainant may have assumed too much by the suggestion that it move to dismiss the complaint without prejudice, Complainant will be afforded the opportunity to show why, notwithstanding the lack of supporting evidence, Complainant is still entitled to a dismissal without prejudice.

Accordingly, Complainant has ten days from the service of this order to show why Complainant is entitled to a dismissal without prejudice rather than a dismissal with prejudice. Unless such showing is made, the complaint will be dismissed with prejudice.



Gerald Harwood
Senior Administrative Law Judge

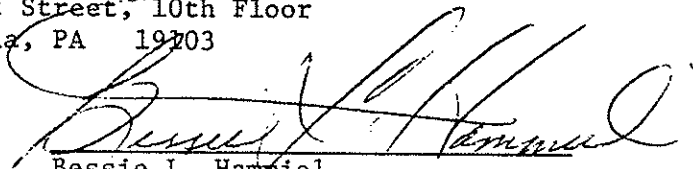
Dated: _____

CERTIFICATE OF SERVICE

I hereby certify the foregoing Order was issued in re Del Val Ink and Color, Inc.; Docket No. II-RCRA-91-0104 and the original was mailed to the Regional Hearing Clerk Region II and copies of the same mailed to the following:

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Dated: April 29, 1993